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| P.O. BOX 398 AUSTIN, TX 78767-0398 | | LU, CHARLES EDWARD | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief

| Application No. | | Applicant(s) | | |
|-----------------|---------------|---------------|--|--|
| 10/623,406 | | HSIUNG ET AL. | | |
| | Examiner | Art Unit | | |
| | CHARLES E. LU | 2161 | | |

| (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 1 The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 3 Applicant's reply has overcome the following rejection(s): 3 Applicant's reply has overcome the following rejection(s): 4 Applicant's reply has overcome the following rejection(s): 5 Applicant's reply has overcome the following rejection(s): 6 Nowly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7 For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) allowed: Claim(s) objected to: Claim(s) elioped. Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10 The affidavit or other evidence is entered. An explanation of the status of the claims after | | CHARLES E. LU | 2161 | | | | | | |
|---|---|---|--|--|--|--|--|--|--|
| 1. □ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidiative, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: □ The period for reply expiresmonths from the mailing date of the final rejection. Examiner Note: I box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRMA REJECTION. See MPEP 705.070; Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee harder bear filed in the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee harders of the standard of | The MAILING DATE of this communication appe | ears on the cover sheet with the o | correspondence add | ress | | | | | |
| application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) The period for reply expires | THE REPLY FILED 28 April 2008 FAILS TO PLACE THIS APP | THE REPLY FILED 28 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. | | | | | | | |
| to period for reply expires on. (1) the mailing date of this Advisory Action. or (2) the date set forth in the final rejection, whichever is later. In no event, however, will be shatutory period for reply expire later than SIX MONTHS from the mailing date to the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TW MONTHS GFTHE FINAL REJECTION. See MPEP 706.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension rate have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final office action; or (2) as set forth in (b) above, if checket. Any reply received by the Office late than three months after the mailing date of the final rejection, even if timely filed may reduce any seamed patient term adjustment. See 37 CFR 1.704(b). MONTICE OF APPEAL. □ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal and the filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). MENDMENTS □ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (deemed to provide a showing or some proposed or amendment are not in compliance with 37 CFR 1.121. See | . Material The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of the application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Requestor Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time | | | | | | | | |
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35 USC 112 Rejection

Applicant's arguments were fully considered and were persuasive. As such, the 35 USC 112 1st and 2nd paragraph rejections are withdrawn.

35 USC 103 Rejection

Applicant's arguments were fully considered but were not persuasive.

Regarding the remarks on p. 5, second paragraph, Applicant argues that "clearly, the new data is not simply characteristic data of the checkpoint, but is instead new production data for the production database. However, the claims do not recite that the new data is new production data. The claims merely recite "new data". As such, the broadest reasonable interpretation as seen in the previous action was used. Furthermore, "be[ing] the file system data" after the switch can mean merely that data in general is stored in a file system), so a file system) is used as the primary data.

Regarding the remarks on p. 6, 1st paragraph, Applicant argues that the interpretation of 'new as already existing in the production database is "entirely eithout merit." The examiner respectfully disagrees. The word "new" is broadly and reasonably interpreted in this situation as being new at least with respect to time. As seen in the prior action, since the prior art "continuously updates" the checkpoint, the data in the checkpoint is newer in time than the data in the production database at certain times, even if other portions of the data may be the same. Thus, continuously updating the checkpoint meets the claim limitation.

As to the issue of combination on p. 6, second paragraph, the examiner has provided proper motivation for combining the references. The ability to improve accessibility for file system data is a motivation, as seen in the prior action. It should be noted that the combination was made so that the production database would be available during the load. Note also that the second reference is drawn to making a production database available during a loading process. Thus, the examiner respectfully disagrees with Applicative argument that the examiner did not identify any particular reason for one of skill in the art to combine the references. Furthermore, no improper hindsight was used.

Applicant's arguments were fully considered. For the above reasons, the prior art rejection of the claims is maintained.